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November 4, 2019

### VIA ECF

Honorable Paul A. Engelmayer  
United States District Judge  
United States Courthouse  
40 Foley Square  
New York, New York 10007

Re: *Shak et al. v. JPMorgan Chase & Co., et al.*, No. 15 Civ. 992 (PAE); *Wacker v. JPMorgan Chase & Co., et al.*, No. 15 Civ. 994 (PAE); and *Grumet v. JPMorgan Chase & Co., et al.*, No. 15 Civ. 995 (PAE)

Dear Judge Engelmayer:

We represent Plaintiffs<sup>1</sup> in the above-referenced Actions and respond to the motion of the U.S. Department of Justice (“DOJ”) to stay this case until resolution of criminal charges against various J.P. Morgan employees accused of manipulating precious metals futures. ECF No. 273. Plaintiffs do not oppose the continued stay of discovery for the time being, but respectfully request permission to file a pre-motion letter seeking leave to amend the operative complaints. If the Court were to allow the requested amendments, Plaintiffs would not oppose continuing the discovery stay while the prefatory steps associated with the amendments, such as answers or motion practice, if any, proceed. Plaintiffs respectfully submit that the Court need not decide at this time whether the stay needs to continue after this period.

**Recent Developments.** On November 30, 2018, the Court stayed these Actions following the criminal guilty plea of J.P. Morgan precious metals trader John Edmonds. *See* ECF No. 263. In so ruling, the Court observed that “[i]t is likely that the Court will eventually permit one or more depositions to be reopened in this case, in the interests of justice.” *Id.* at 2. Subsequently, on June 10, 2019, the Court granted the Government’s request to stay the Actions for an additional five months. *See* ECF No. 269.

In the intervening months, the Government has continued to bring criminal charges against additional current and former members of J.P. Morgan’s precious metals desk. To date, five J.P. Morgan precious metals traders have pled guilty or have been indicted for manipulation of precious metals futures.<sup>2</sup> In addition to violations of the Commodity Exchange Act, including

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<sup>1</sup> “Plaintiffs” include Daniel Shak; SHK Diversified, LLC; Thomas Wacker; and Mark Grumet. All docket entries are to *Shak et al. v. JPMorgan Chase & Co.*, No. 15 Civ. 00992 (PAE) (S.D.N.Y.).

<sup>2</sup> On August 22, 2019, a grand jury in the Northern District of Illinois returned a 14-count indictment of Messrs. Gregg Smith, Michael Nowak, and Christopher Jordan, all former or current precious metals traders at J.P. Morgan, alleging the three conspired to conduct or participated in an enterprise engaged in a pattern of racketeering activity and engaged in wire fraud, bank fraud, attempted price manipulation, commodities fraud, and spoofing. *See* ECF No. 270-2 (Indictment, *U.S. v. Gregg Smith, Michael Nowak, and Christopher Jordan*, 19 Cr. 669 (N.D. Ill. Aug.

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spoofing and layering, the Government is pursuing racketeering charges against certain J.P. Morgan traders. *Bloomberg* captured these developments with the headline “JPMorgan’s Metals Desk Was a Criminal Enterprise, U.S. Says.”<sup>3</sup> Notably, Michael Nowak, J.P. Morgan’s Global Head of Base and Precious Metals Trading, has been placed on leave at J.P. Morgan.<sup>4</sup> Mr. Nowak oversaw J.P. Morgan’s precious metals traders, was directly involved in the liquidation of the Shak Plaintiffs’ positions, was J.P. Morgan’s designated 30(b)(6) witness, and is J.P. Morgan’s designated non-retained expert witness pursuant to FRCP 26(a)(2)(C). *See* ECF No. 251-3.

**Plaintiffs’ Request to Partially Lift the Stay.** With the Court’s permission, Plaintiffs will presently request leave to amend their operative pleadings to include previously unknown information based on the Government’s plea agreements with and indictments of certain J.P. Morgan traders. Plaintiffs *do not* oppose the continued stay of discovery while Plaintiffs amend their pleadings and J.P. Morgan answers or otherwise seeks to move to dismiss. In sum, the Parties can advance these Actions and the Court can revisit later whether a continuation of the stay is necessary when any threshold determinations related to the amendment have been addressed.

Plaintiffs respectfully request to file a pre-motion letter annexing a proposed amended complaint no later than November 20, 2019. Plaintiffs believe that good cause exists for the requested relief. The Indictment and plea agreements contain dozens of representative examples of J.P. Morgan’s traders’ alleged commodities manipulation. *See, e.g.*, ECF No. 270-2 at ¶¶ 28-41. In fact, as the Government noted in its submission to this Court and in its Indictment, direct evidence exists that J.P. Morgan traders targeted the Plaintiffs. *See* ECF No. 270-2 at ¶ 36; ECF No. 273 at 4. The Indictment, for example, notes that on September 24, 2009, Co-Conspirator No. 3 had a conversation with Co-Conspirator No. 4 brazenly admitting that they successfully “[s]poofed locals”, and “hopefully [Plaintiff] m r s h a q.”

Defendants have indicated that they will oppose this request. However, the proposed approach will narrow the scope of issues before the Court and promote efficiency by ensuring continued progress in the Actions, which have been pending for almost five years, nearly nine years from the date of the alleged injury.

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22, 2019)). On August 20, 2019, Christian Trunz, a former precious metals trader at J.P. Morgan, pled guilty to conspiracy and spoofing, acknowledging that he conspired with other precious metals traders at J.P. Morgan to manipulate the precious metals market. *See* ECF No. 270-1.

<sup>3</sup> T. Schoenberg & D. Voreacos, *JPMorgan’s Metals Desk Was a Criminal Enterprise, U.S. Says*, *Bloomberg* (Sept. 16, 2019), <https://www.bloomberg.com/news/articles/2019-09-16/jpmorgan-s-metals-desk-was-a-criminal-enterprise-u-s-says>.

<sup>4</sup> *See* Dawn Giel, *JP Morgan puts traders on leave as Justice Department’s criminal investigation continues*, *CNBC* (Sept. 13, 2019), <https://www.cnbc.com/2019/09/13/jp-morgan-puts-traders-on-leave-amid-criminal-investigation.html>.

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We appreciate the Court's continued attention to this matter, and we are available to address any questions or concerns.

Respectfully submitted,

/s/ David E. Kovel  
David E. Kovel

*Counsel for Plaintiffs*

cc: All Counsel of Record (by Electronic Filing)